

**United States Department of Labor
Employees' Compensation Appeals Board**

L.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Metro, GA, Employer**

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**Docket No. 15-1069
Issued: August 12, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 13, 2015 appellant filed a timely appeal of a January 5, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing disability for work beginning April 7, 2014 due to her accepted employment-related conditions.

FACTUAL HISTORY

On October 24, 2012 appellant, then a 45-year-old clerk, filed a traumatic injury claim alleging that she sustained a sharp pain in her left shoulder on October 19, 2012 while lifting a 52-pound sack of mail onto a scale. She returned to light-duty work on October 24, 2012.

¹ 5 U.S.C. § 8101 *et seq.*

OWCP accepted appellant's claim for sprain of the left shoulder on November 30, 2012. On April 2, 2013 it updated her accepted conditions to include shoulder tendinitis on the right. The record indicates that appellant also has accepted back and foot conditions.

Appellant accepted a modified assignment as a mail processing clerk on April 9, 2013 with no use of her right arm. On April 17, 2013 her attending physician, Dr. Stephen Dawkins, a physician Board-certified in physical medicine, listed appellant's work restrictions as no overhead work with the right arm and 10-minute rest breaks every 2 hours. He altered appellant's restrictions on May 8, 2013 indicating that appellant could use both arms at her own pace and perform sit down work only. On June 7, 2013 he indicated that she could use both arms at her own pace. Dr. Dawkins stated on September 4, 2013 that appellant could work at her own pace with no repetitive reaching. OWCP assigned a field nurse to appellant's claim on October 21, 2013.

OWCP requested additional medical evidence from Dr. Dawkins on October 3, 2013. Dr. Dawkins completed a work restriction evaluation on November 13, 2013 and indicated that appellant was unable to perform her usual job and restricted her pushing, pulling, lifting, squatting, kneeling, and climbing. The employing establishment offered appellant a limited-duty assignment on November 25, 2013 as a mail processing clerk. Appellant's duties included: signing in Express Mail for two hours; relieving clerks on the automated parcel bundle sorter (ASPBS) machine for two hours; sorting mail; and scanning the foreign mail on the dock for two hours. The physical requirements included pushing, pulling, lifting, squatting, and kneeling with 20 pounds, and walking and standing for two hours a day. Appellant accepted this position on November 25, 2013.

On November 26, 2013 Dr. Dawkins indicated that appellant could lift up to 20 pounds, that she should perform repetitive work and that she should perform sit down work in a heated area. He completed a duty status report and opined that she could work with express mail, but could not lift over 20 pounds, repeatedly use her arm, or perform repetitive work. Dr. Dawkins stated that appellant could only work in an indoor heated area.

The field nurse completed a report on November 26, 2013 and noted that appellant planned to return to work on November 12, 2013. He visited the employing establishment on November 12, 2013 and met with appellant. The field nurse noted that appellant's supervisor was unclear as to the work she could perform at that time, as she was to work at her own pace. He informed appellant's supervisor that he would obtain clarification from Dr. Dawkins. On November 13, 2013 Dr. Dawkins stated that appellant had 20-pound lifting, pushing, and pulling restrictions and that she could not process more than 400 pieces of mail an hour. Appellant stopped work on November 12, 2013 and informed the field nurse on November 26, 2013 that she was being assigned duties that she could not perform even though the duties were within her restrictions. In a visit to Dr. Dawkins on November 26, 2013, he stated that appellant could work Express Mail, that in regard to the ASPBS she could not lift more than 20 pounds, and that in regard to the foreign mail she had to work in a heated area.

On December 18, 2013 Dr. Dawkins listed appellant's restrictions as lifting up to 20 pounds, no repetitive work and sit down work only in a heated area.

On January 15, 2014 Dr. Dawkins continued to support appellant's partial disability for work, noting that she could lift up to 20 pounds, could not perform repetitive work, and that she should perform sit down work only in a heated area.

Appellant stopped work on January 15, 2014 and alleged that she was working in a cold area. The field nurse visited the employing establishment on January 24, 2014 and noted that appellant had stopped work on January 15, 2014. Appellant informed the field nurse that she was working in a cold area. Dr. Dawkins examined her on January 31, 2014 and indicated that her work restrictions remained the same. On February 14, 2014 he indicated that appellant could perform modified work lifting up to 20 pounds and no overhead work. Dr. Dawkins completed a work capacity evaluation on February 14, 2014 and indicated that she could work eight hours a day with restrictions. He indicated that appellant should not reach above the shoulder, or lift over 20 pounds.

On April 3, 2014 Dr. Dawkins noted that appellant had not worked for several weeks and stated that her neck and shoulder symptoms were stable. He indicated that she could perform modified work lifting up to 20 pounds with no overhead work. Dr. Dawkins opined that appellant could continue modified work lifting up to 20 pounds with no overhead work. On April 8, 2014 he examined her and referred her to Dr. Zouhier Shama, a general surgeon, for consultation.

In a report dated April 7, 2014, Dr. Shama noted appellant's history of injury and stated that she stopped work on January 14, 2013 due to pain. Appellant reported that she was unable to perform her two-hour duties on the highway operation as she could not lift and load heavy sacks. Dr. Shama diagnosed bilateral shoulder sprain and tendinitis. He opined that appellant had sustained a consequential right shoulder injury as a result of overcompensating for the injury to her left shoulder. In a separate report of the same date, Dr. Shama opined that her modified work had aggravated her condition and that Dr. Dawkins' request for sedentary work was not honored by the employing establishment. He stated that appellant was required to lift and push mail. Dr. Shama took her off work until May 5, 2014 and listed her restrictions as no lifting more than 20 pounds, no carrying, walking no more than 5 minutes at a time, sedentary duties that did not involve her shoulders, no lifting above the shoulder and no fine manipulation for more than 30 minutes at a time.

Appellant filed a Form CA-7 claim for compensation on May 15, 2014 requesting compensation for leave without pay from April 7, 2014. In a letter dated May 23, 2014, OWCP informed her that additional medical evidence was needed to support her claim for compensation for the period April 7 through May 3, 2014.

Dr. Shama completed a report on May 27, 2014 and repeated his findings that appellant was forced to work outside her restrictions including more walking, standing, rising from seated positions, lifting, and use of her hands, arms, and shoulders in the duties assigned than the sedentary position described in the modified assignment. He noted pain and discomfort in her shoulder. Dr. Shama stated that appellant was not allowed to return to work on May 5, 2014 within the restrictions that he provided. He diagnosed bilateral shoulder sprain and shoulder tendinitis.

Appellant filed a Form CA-7 claim for compensation for the period May 5 through 31, 2014. OWCP responded on June 12, 2014 and requested additional medical information. It also informed appellant that Dr. Shama was not her treating physician and explained the process of changing treatment physicians.

In a letter dated June 18, 2014, appellant requested that Dr. Shama become her treating physician as Dr. Dawkins did not feel that he could provide further assistance and referred her to Dr. Shama.

Appellant responded to OWCP on May 28, 2014 and stated that Dr. Shama was her doctor of record. She alleged that the work that she was assigned exceeded her modified-duty restrictions. Appellant stated that the work in the highway unit was constant standing, bending, and lifting of sacks, which was work outside her medical restrictions.

In a letter dated July 2, 2014, OWCP stated that Dr. Dawkins referred appellant for a consult only with Dr. Shama, but that there was no medical basis provided for this referral. It denied appellant's request to change physicians and requested additional medical evidence from Dr. Dawkins in support of appellant's claim for compensation.

Appellant filed another Form CA-7 claim for compensation on July 3, 2014, requesting compensation for leave without pay from June 2 through 28, 2014. Dr. Dawkins completed a report on July 7, 2014 and referred appellant to Dr. Shama for evaluation and treatment. He indicated that she could perform modified work lifting up to 20 pounds with no overhead work.

Dr. Shama examined appellant on July 14, 2014 and stated that her left shoulder injury was resolving and slowly improving. He stated that she could not return to work as the employing establishment would not accept her work restrictions.

On July 23, 2014 OWCP denied appellant's claim for compensation for the ongoing period commencing April 7, 2014. It stated that she had not submitted evidence that she was required to work outside her restrictions.

Appellant requested reconsideration of this decision on August 6 and 13, 2014. In a letter dated August 4, 2014, she alleged that she was in pain and did not feel that her physicians were listening to her. Appellant informed Dr. Dawkins that the modified duties assigned violated the work restrictions he imposed, but he was not sympathetic. She argued that Dr. Shama was her treating physician and that the employing establishment was unable to provide her with work within her restrictions.

In a report dated July 29, 2014, Dr. Shama stated that Dr. Dawkins referred appellant to him for evaluation and treatment. He noted appellant's history of injury and accepted shoulder conditions. Dr. Shama noted that Dr. Dawkins returned appellant to modified work in November 2013, but that appellant asserted that she was required to work beyond her prescribed limitations. He stated that appellant should not lift more than 20 pounds and should not perform repetitive work using her shoulder and arms. Dr. Shama observed that appellant had limited range of motion resulting from repetitive use of her shoulders. He opined that appellant was totally disabled from April 7 through May 15, 2014 at which point he found that she was refused work within her restrictions.

In a letter dated August 14, 2014, OWCP noted that it appeared that appellant was claiming disability due to a material change or worsening of her accepted employment injuries. It requested that she provide additional evidence if she believed that she had sustained a recurrence of disability due to a spontaneous worsening of her injury-related condition.

Appellant responded on August 21, 2013 and stated that she stopped work because, she had to stand, bend, stoop, and twist to sign in corporate Express Mail and packages. She further alleged that this section was located next to the open dock exposing her to the cold in the winter. Appellant stated that she was assigned to work ASPBS duties which involved reaching and processing up to 1600 pieces of mail an hour. She alleged that this was the most repetitive task at the employing establishment. Appellant alleged that in the highway section she was required to sort and distribute parcels and packages of all sizes. She stated that she had to pull sacks of mail once full and that these sacks could weigh up to 70 pounds. Appellant alleged that scanning foreign mail involved items weighing more than 20 pounds and exposed her to cold weather.

Appellant stated, "I do not believe that my claim is a recurrence." She asserted that the problem was that the work assigned was outside of the medical restrictions imposed by her physician. Appellant stated that she could perform limited-duty work if appropriate limited-duty work was provided for her. She alleged that the field nurse agreed with her assessment.

By decision dated August 28, 2014, OWCP denied appellant's request to change physicians. Appellant requested reconsideration of this decision on September 9, 2014. OWCP issued a decision dated September 15, 2014 and authorized her request to change physicians to Dr. Shama on the basis that a proper medical referral for treatment of her left shoulder injury was made from Dr. Dawkins to Dr. Shama.

In a report dated October 9, 2014, Dr. Shama noted that appellant reported increased shoulder pain while working. He stated that she continued to have residuals of her initial shoulder injury and required further medical treatment.

On October 9, 2014 the employing establishment submitted a statement and denied appellant's allegations that she was provided work beyond her restrictions. It stated that she did not have to lift packages over 20 pounds in the express operation as the regular duty clerks pushed the mail to her with the tag face up for her to sign in the mail. The employing establishment submitted a witness statement from a coworker dated October 8, 2014 noting that he worked with appellant in the Express Mail operation and that she did not lift heavy packages. Appellant's coworker stated that the packages were placed in containers and pushed to the area where she sat. She then used a scanner to scan the packages into the system without lifting, bending, stooping, twisting, or repositioning the mail. In regard to appellant's duties in the ASPBS operation, the employing establishment stated that appellant was to work at her own pace facing and placing the mail on the belt for bar code reading. It stated that highway operation was a manual operation for mail too small or too large for the machine. Mail for the 800's and 900's weighed less than 20 pounds and appellant was not required to lift over 20 pounds including sacks. The employing establishment denied that she worked outside her restrictions. It noted that in the foreign mail section mail was scanned with a device that weighed two to three pounds and placed in a container. The foreign mail section was located on

the platform dock at the employing establishment and when appellant complained about the cold, she was moved to the rewrap section inside the building.

On October 27, 2014 OWCP denied modification of the July 23, 2014 decision finding that appellant had not established that she was totally disabled beginning April 7, 2014. It noted that Dr. Shama's reports were based on an inaccurate factual background as appellant's assigned work was within her restrictions.

In a letter dated November 14, 2014, appellant requested reconsideration of this decision on November 19, 2014. In reports dated November 10 and 18, 2014, Dr. Shama again stated that the work that she was required to perform exceeded her restrictions and was causing additional injury to her. He stated that, when working in the highway and Express Mail units appellant was reaching into wire containers lifting large envelopes, parcels, and other mail which required her to perform repetitive work with her shoulders, arms, and hands. Dr. Shama stated that in the ASPBS until she performed repetitive work with her shoulders to face the packages that came off the belt and to pull the mail down to the next belt. He concluded that these duties aggravated appellant's accepted shoulder conditions. Dr. Shama stated that she was taken off work to allow her injured shoulder to be rehabilitated and was unable to continue to perform the repetitive duties of her modified position without causing further injury to her shoulder and negating the effect of medical treatment. He concluded, "Therefore, the patient was temporarily totally disabled from work beginning April 7, 2014 through the present as the result of not being able to perform the repetitive duties of appellant's position without causing further damage to her shoulders, and to allow her to respond to the supervised physical rehabilitation."

Appellant submitted a witness statement from a coworker dated November 7, 2014, which stated that an Express Mail clerk must continually walk over and check the cart and sign in automobile parts. The coworker stated that he had witnessed her bending over into wire cages and containers to sign the mail into the systems. He noted that another coworker would weigh heavy mail for appellant, but she still had to manipulate the mail piece in order to scan the label. The coworker noted that the Express Mail operation was located directly across from the airline dock doors which were open to the outside and the area was so cold that employees wore hats, coats, gloves, and scarves while working. The witness stated that the highway operation also required appellant to sort mail into priority sacks which could hold up to 70 pounds of mail. He stated that once a sack was full, it must be pulled and replaced with an empty sack. The witness stated that when she reported to this section, the priority sacks would be full of mail and she then had to drag the full sacks to the side of the operation to hang empty sacks to start sorting the mail.

The employing establishment responded on December 16, 2014 and again denied appellant's allegations of working outside her restrictions. It submitted a witness's statement alleging that she never performed heavy lifting and simply signed in flats thrown in carts.

Appellant completed a statement on December 24, 2014 and alleged that, while she received help with heavy packages, she was required to stand to sign in Express Mail. She also disagreed with the most recent witness statement.

By decision dated January 5, 2015, OWCP denied modification of its finding that appellant had not established that she was totally disabled beginning April 7, 2014.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁴

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁵ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁶ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁷

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁸ When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establish that he or she can perform the light-duty position, the employee has the burden to

² *Id.* at §§ 8101-8193.

³ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Id.*

⁷ *Id.*

⁸ 20 C.F.R. § 10.5(x).

establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁹ Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her recurrence of disability commencing April 7, 2014 and her October 19, 2012 employment injury.¹⁰ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.¹¹

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹² Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁴

ANALYSIS

Appellant filed a claim for a traumatic injury which OWCP accepted for sprain of the left shoulder on November 30, 2012. OWCP expanded her claim to include right shoulder tendinitis on April 2, 2013. Appellant's attending physician, Dr. Dawkins released appellant to return to light-duty work with restrictions on November 13, 2013 and indicated that she was unable to perform her usual job and restricted her pushing, pulling, lifting, squatting, kneeling, and climbing. On November 26, 2013 he indicated that she could lift up to 20 pounds, that she should perform repetitive work and that she should perform sit down work in a heated area. Dr. Dawkins completed a duty status report and opined that appellant could work with express mail, but could not lift over 20 pounds, repeatedly use her arm or perform repetitive work. He stated that she could only work in an indoor heated area.

⁹ *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁰ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-9 (1982).

¹¹ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

¹² *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁴ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The employing establishment offered appellant a modified-duty position on November 25, 2013 as a mail processing clerk. Appellant's duties included: signing in Express Mail for two hours; relieving clerks on the ASPBS machine for two hours; sorting mail; and scanning the foreign mail on the kneeling with 20 pounds and walking and standing for two hours a day. Appellant accepted this position on November 25, 2013. Dr. Dawkins reviewed the position description and repeated his limitations of no moving over 20 pounds and seated work in a heated area. Appellant stopped work and filed claims for compensation beginning April 7, 2014 alleging that she was required to work outside her restrictions including heavy lifting, exposure to cold, and repetitive work. The employing establishment denied that she was required to work outside her restrictions.

The Board finds that appellant has not established that she sustained a recurrence of total disability due to a change in the nature and extent of her limited-duty job requirements. The employing establishment submitted several rebuttals and witness statements denying her allegations that she was required to work beyond her restrictions. It described each of appellant's assigned duties and explained why these duties were dock for two hours. The physical requirements were pushing, pulling, lifting, squatting, and

within her restrictions from Dr. Dawkins or how the duties were altered to fit within Dr. Dawkins' restrictions. The Board finds that appellant has not established that she was required to work outside her restrictions.¹⁵

Dr. Shama initially found that appellant was totally disabled as the employing establishment was violating her work restrictions. The Board finds that Dr. Shama's reports were not based on an accurate factual history as the record does not support appellant's allegations of work outside her restrictions. As Dr. Shama did not provide an accurate factual basis for his opinion that appellant was totally disabled and required further work restrictions due to work outside her restrictions, his reports do not establish that appellant sustained a recurrence of total disability on or after April 7, 2014.

In reports dated November 10 and 18, 2014, Dr. Shama stated that appellant was taken off work to allow her injured shoulder to be rehabilitated as she was unable to continue to perform the repetitive duties of her modified position without causing further injury to her shoulder and negating the effect of medical treatment. He concluded, "Therefore, the patient was temporarily totally disabled from work beginning April 7, 2014 through the present as the result of not being able to perform the repetitive duties of her position without causing further damage to her shoulders, and to allow her to respond to the supervised physical rehabilitation." The Board finds that Dr. Shama provided addition medical restrictions and alleged that appellant was totally disabled without providing an accurate factual history, detailed physical findings, or medical reasoning in support of his opinion. Dr. Shama relied on appellant's statements that it was too painful to work and that she was required to work beyond her established restrictions. The Board finds that his reports are not sufficient to meet appellant's burden of proof in establishing a period of total disability on or after April 7, 2014.

¹⁵ D.J., Docket No.14-961 (issued September 23, 2014).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she was totally disabled on or after April 7, 2014 due to her accepted employment-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board